

2013 Annual Report of the Iowa Consumer Credit Code

The Attorney General is directed by Chapter 537 of the Iowa Code to administer the Iowa Consumer Credit Code (hereinafter “ICCC”). Since 1974, the Attorney General has delegated primary authority for the administration and enforcement of the ICCC to the Consumer Protection Division (hereinafter “CPD”). The head of the CPD is the Administrator of the ICCC and has traditionally appointed a Deputy Administrator to oversee the day-to-day duties of regulating and enforcing the ICCC. The current Administrator is Bill Brauch, Director of the CPD, and the current Deputy Administrator is Assistant Attorney General Jessica Whitney.

The Administrator's responsibilities under the ICCC include resolving complaints, investigating serious complaints, formulating and carrying out litigation, drafting legal opinions, conducting consumer credit educational activities and programs, and monitoring the status of consumer credit in the state. The Administrator coordinates with other Iowa agencies, other states with versions of the Uniform Consumer Credit Code, and federal agencies with oversight of the consumer credit industry.

Iowa Code section 537.6104(5) directs the Administrator to report annually on the ICCC and the state agencies charged with administering the ICCC, as well as the general availability of credit. This report is broken down into sections that correspond with the reporting requirements of Iowa Code section 537.6104(5).

The contents of this report are compiled from the previous year's report, with relevant information updated to reflect recent changes.

1. Consumer Complaints

Iowa Code section 537.6104 allows the Administrator of the ICCC to handle consumer complaints and encourage voluntary compliance with Code requirements. The Administrator engages in a conscious effort to combine those two responsibilities. When handling consumer complaints, the Administrator generally seeks voluntary compliance first and takes legal action second or as needed.

The processing, assignment, and handling of ICCC complaints are a part of the daily activity of the CPD. The CPD received a total of 2944 written consumer complaints during the 2013 calendar year, at least 897 of which were filed directly pursuant to the ICCC. Though complaints whose main focus was credit concerned about 30% of the total received by the CPD, hundreds of other complaints also involved credit although not classified as such, like complaints about home improvements and auto issues.

Complaints concerning credit continue to rank high in number, within the top categories of consumer complaints, and should continue to be regarded as an area of major concern. The credit complaints break down as follows, with their rank in relation to other categories of complaints:

1. Home Mortgages	316
2. Mortgage Foreclosure Rescue	174
3. Debt Collection	171
6. Motor Vehicle Credit	142
13. Payday Loans	53
17. Student Loans	41

For all complaints, many of the inquiries handled by the CPD can be resolved by explaining the applicable provisions of the ICCC to those involved in the complaint. Other times, the office must first investigate the complaint and determine the facts in order to outline to the parties how the law applies to their situation. The CPD strives to resolve the complaints in a manner that makes the consumer whole, where appropriate.

Complaints concerning debt collection practices continue to appear close to the top of the list. The CPD's policy toward debt collection complaints is to resolve them at the administrative level, obtain redress for any aggrieved consumers, and stop any problematic practices. Article 7 of the ICCC sets forth with impressive thoroughness exactly what debt collection techniques, practices, and procedures are prohibited. Most debt collection complaints are filed by consumers aggrieved by what they believe is an unlawful debt collecting practice. Generally, the CPD resolves the problem through an informal agreement with the lender or debt collector. When the ICCC is clearly violated, the CPD requires not only redress for the aggrieved consumer but the Administrator may seek and obtain an Assurance of Discontinuance pursuant to Iowa Code section 537.6109 where the creditor or collector clearly states that they have been notified as to what is wrong with their practice in question and that they are agreeing to discontinue it. In some instances, the creditor or collector is able to demonstrate either that there has been no violation of the ICCC or that any violation was unintentional and the creditor or collector intends to comply with the statute.

When informal resolution of debt collection complaints is insufficient, the CPD engages in enforcement actions to ensure Iowa lenders and debt collection agencies keep their practices in compliance with the ICCC. The CPD has also been involved in multi-state actions against debt collectors and this year obtained major settlements against two of the nation's largest debt collection firms. Both settlements provided for consumer restitution in addition to injunctive relief. Thanks to their increased resources and jurisdictional reach, these multi-state actions provide an excellent opportunity to investigate companies, stop any prohibited practice, and obtain appropriate redress.

Additionally, the CPD continues to receive a number of complaints based upon problems arising from automobile financing. The growth of automobile dealers that self-finance, known as "Buy Here, Pay Here," dealers has resulted in an increase in the number of auto finance complaints and ICCC violations. Many of these complaints have led to larger investigations of dealers. The investigations have revealed the underreporting of finance charges, illegal late fees, and failure to issue notices of rights to cure, among other violations. In calendar year 2013, the CPD obtained an Assurance of Discontinuance against an Iowa used car dealer and initiated investigations of many others. The resolution of these investigations is usually a refund of all illegal charges, changes in paperwork and procedures in order to comply with the law, sometimes payment of a civil penalty, and the signing of an Assurance of Discontinuance pursuant to Iowa Code section 537.6109.

In addition to the formal written complaints the CPD receives, the day-to-day work of the attorneys assigned to ICCC inquiries, complaints, and investigations often involves interacting with the borrowing public, credit industry representatives, attorneys, and representatives of other state agencies about compliance with the ICCC. Iowa Code section 537.6104(1)(d) requires the Administrator to counsel persons and groups on their ICCC rights and duties. The day-to-day activities in administering the ICCC involve numerous emails, telephone calls, letters, informal interpretations, responses, and resolutions between the CPD office and the various parties outlined above. In addition to advice given via phone and email, the CPD also issues what are called informal advisory opinions, which are written responses to questions concerning credit and/or the interpretation of the ICCC. In 2013, the office did

not publish any informal advisory opinions, but did respond to numerous phone and email requests concerning the interpretation of the ICCC.

2. Credit Education

The ICCC also requires that the Administrator establish educational programs on credit practices and problems. *See* Iowa Code § 537.6104(1)(e). With limited staff to devote to ICCC matters, the CPD has made education for consumers, the lending industry, and members of the Bar a top priority. The recent financial crisis has only served to underscore the need for greater financial education.

Once again CPD staff members made a number of presentations to large groups concerning state and federal consumer credit laws. In April at the annual meeting of the Independent Iowa Automobile Dealers Association the Deputy Administrator gave a talk and took questions about the current state of car finance in Iowa with a focus on Buy Here, Pay Heres. In July, the Deputy Administrator was a guest on a radio show in the Quad Cities; she discussed student loans and took questions from listeners. In October, the Deputy Administrator spoke to the Ames Human Services Commission on predatory lending in general with a focus on what type of high interest lending was legal in Iowa. Finally, in December, the Deputy Administrator was a panelist at the Consumer Financial Services Annual Convention where she spoke on debt collection issues.

The CPD also participates in a variety of less formal consumer-oriented conferences, seminars, meetings, and speaking presentations, including presentations to graduate level college classes, law school classes, high school classes, and senior citizens' groups. The attorneys and investigators of the CPD speak around the state on the general topic of consumer fraud and protection in Iowa. Though these presentations deal more generally with the overall work of the CPD, they also discuss the basic provisions of the ICCC and often respond to specific ICCC questions from audience members. The CPD also assists with an "Attorney General Booth" each year at the Iowa State Fair, staffed by employees from throughout the Attorney General's office. Many of the questions from consumers visiting the booth pertain to consumer credit, and many of the educational materials offered to the public through the booth seek to inform consumers about the ICCC and its consumer credit protections.

The Division has also provided guidance and education in the field of motor vehicle financing. The staff has given advice on continuing education courses for motor vehicle dealers, focusing on motor vehicle finance. The staff also routinely answers questions from motor vehicle trade groups and many of those questions are finance-related. In late 2013, CPD Director Brauch recorded a video presentation to be shown as part of the training of Iowa used motor vehicle dealers pursuant to the requirements of Iowa Code section 322.7A. Consumer credit issues were interwoven throughout the presentation.

In monthly publications entitled "Consumer Advisories" the CPD reaches tens of thousands of Iowans. The "Consumer Advisories," are bulletins that provide tips and information to consumers on relevant consumer issues. During 2013 advisory topics included reverse mortgages, student loans, used-automotive transactions, debt relief, and the use of gift cards and certificates among others. These advisories are sent statewide to over 3,000 groups and communities and are free to reprint and redistribute. They are also available on the Attorney General's website.

In addition, to public speaking, meetings, and publications, staff members also have informal discussions and meetings with affected individuals. It is not uncommon for representatives of various

businesses or members of the credit industry to come into the CPD office with their attorneys to ascertain what they must do to comply with the ICCC. Staff members regularly respond to questions posed by other state agencies, as well. The many ICCC-related questions posed to staff members during all these public contacts shows that there is still a great deal of confusion about the law, and that even a stronger educational campaign may be needed.

3. Developments in Iowa Consumer Credit Law

In 2013, one case concerning the ICCC was heard on appeal in Iowa. The case was *Earlham Savings Bank v. Morrel*, 837 N.W.2d 681 (Iowa App. July 10, 2013), which addressed the importance of a loan's business or consumer credit purpose over the actual contractual language when determining whether Iowa Code Section 537.3201 should apply to a mortgage foreclosure.

In *Earlham*, the Iowa Court of Appeals affirmed a district court's ruling to uphold a foreclosure on a home owned by the defendant, Morrel, when he entered default on a mortgage loan owed to the plaintiff. *Earlham*, 837 N.W.2d at 1. Defendant argued that the district court erred in its ruling for the plaintiff because the parties' initial credit agreement contained the label "consumer credit transaction," and he was not given the required notification of his right as a consumer to rescind under the Truth in Lending Act, 15 U.S.C. § 1635 (2007). *Id.* at 6. Iowa Code Section 537.3201 incorporates the Truth in Lending Act into Iowa law. *Id.* at 7. Under the Truth in Lending Act, 15 U.S.C. § 1635(a), when a consumer credit transaction utilizes a primary dwelling property as a security interest, the creditor must disclose to the debtor that he or she has until midnight of the third business day following the transaction to rescind. *Id.* However, the Court of Appeals upheld that regardless of the language of the loan agreement, it was undisputed that the loan was used for business rather than consumer purposes, and therefore the consumer credit statutes did not apply. *Id.*

4. Agency Reports on Consumer Credit

Two state regulatory units are charged by Iowa Code § 537.6105 with enforcing the ICCC with respect to the lending institutions they license and regulate: the Iowa Division of Banking and the Iowa Division of Credit Unions. Throughout the year the Administrator has frequent contact with these agencies regarding interpretation and enforcement of credit code provisions and changes in the consumer credit industry. The Administrator notifies a regulatory agency when the CPD receives a complaint involving one of the agencies' licensees. Likewise, the agencies alert the Administrator of serious violations that come to their attention.

Each agency examines its licensees for ICCC compliance during the agency's regular, periodic examinations. The Credit Union Division, overseeing the state's 114 credit unions, examines each credit union every twelve to eighteen months. The Credit Union Division received one ICCC-related complaint in 2013. The Banking Division oversees licensing for 297 state banks and 718 loan companies, including delayed deposit locations, debt managers, closing agents, money servicers, and mortgage companies. The Banking Division received 30 complaints in 2013, relating to the ICCC and all concerning internet lending.

5. Consultation With Other Jurisdictions

The CPD benefits from the experience and knowledge of credit code administrators in other states by participating in the American Conference of Uniform Consumer Credit Code States (ACUCCCS) every year. The conference is an excellent forum at which to discuss common problems

in UCCC administration and collectively work toward fair resolution. The meetings enable each state to keep its administration of its consumer credit code in harmony with other jurisdictions as required by section 537.6104 of the Iowa Code.

The 2013 ACUCCCS meeting was held in Madison, Wisconsin. All credit code states attended the meeting. A hot topic of discussion was internet lending controlled or facilitated by Native American Tribes and the ongoing litigation involving the legality of this type of lending. Internet lending by domestic and foreign corporations was also discussed. States shared updates regarding their various experiences working with the federal Consumer Financial Protection Bureau. Additionally, the group held an in-depth discussion about potential credit bubbles in the area of auto finance, student loans, and credit cards. And, as always, discussion on legislative changes to each state's statute was held.

The ACUCCCS states also keep in regular contact via an email listserve. The listserve provides an excellent opportunity for discussion of potential changes in the law regarding consumer credit and the states' interpretation of portions of the ICCC.

6. Availability of Consumer Credit

By keeping in frequent contact and exchanging information with other state consumer credit administrators throughout the year, the CPD has been able to keep abreast of trends in the nationwide consumer credit industry. Unfortunately, we have been unable to compile information regarding the availability of credit to Iowa consumers due to the high cost of such data gathering and lack of any current data gathering system.

However, from its contacts with consumers, businesses, and the industry, as well as other state agencies, the CPD is able to assess the availability of credit anecdotally. Currently, credit is widely available to almost all Iowa consumers. However, the quality of the credit that may be available to some is suspect. Thanks to the proliferation of direct deposit services (also known as payday loans) and hard-to-police internet loans, much of the credit available to some consumers is only available at a very high cost. Higher interest open-end credit, in the form of credit cards, also appears to be widely available. Additionally, home loans remain harder to obtain for people with lower credit scores. However, the tightening of home lending standards brought about by increased regulation may benefit consumers by better assuring they only obtain home loans that they may reasonably be expected to repay. Finally, student loan debt continues to rise, and is of a real concern in the future as the debt becomes due and is particularly difficult to discharge in bankruptcy.

7. Proposed Changes to the ICCC

Finally, the Office of the Attorney General reviews the ICCC to suggest to the legislature amendments and improvements. Again in 2013, the Attorney General, through legislation, proposed raising the jurisdictional limit of the Code to \$53,100, the same jurisdictional limit now applicable under the federal Truth in Lending Act, on motor vehicle transactions only. As noted in last year's report, only consumer transactions under \$25,000 receive the substantial protections of the ICCC. The \$25,000 limit was set in 1974; in today's dollars, that 1974 limit is actually valued at over \$100,000. In fact, the average price of a new car—one of the classic models of a consumer credit transaction—is over \$25,000. The result is that many motor vehicle credit transactions are now excluded from the protections of the ICCC and escape state regulation altogether, which is something incredibly unusual as almost every state regulates motor vehicle credit transactions in some manner. Excluding a wide

swath of consumer transactions which were originally contemplated to fall within the ICCC's jurisdiction leaves Iowa consumers deprived of the rights the ICCC sought to grant. The Attorney General's modest proposal of increasing the jurisdictional limit for motor vehicle transactions failed to make it out of subcommittee on either side of the Iowa legislature.

The interpretation and enforcement of the Iowa Consumer Credit Code is an important area where the activities of the Attorney General's office affect every Iowan. As the office deals with broad authority in the areas of interest rates, lending practices, and debt collection, and as Iowans continue to face credit and debt challenges, it is clear that the protections afforded consumers by the ICCC are more important than ever.